



2026:AHC-LKO:2515

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/s 482 No. - 6926 of 2023

Sanjay Dixit

.....Applicant(s)

Versus

State of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko. and another
.....Opposite Party(s)

Counsel for Applicant(s) : Paavan Awasthi, Nadeem Murtaza, Prashast Puri
Counsel for Opposite Party(s) : G.A., Manish Bajpai, Prachish Pandey, Ravi Dev Dwivedi, Santosh Srivastava

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HON'BLE BRIJ RAJ SINGH, J.

1. This application under Section 482 Cr.P.C. has been filed seeking quashing of the entire proceedings of Complaint Case No.7374 of 2020 (Syed Rizwan Ahmad versus Jaipur Dialogues Forum and others), pending in the court of Additional Chief Judicial Magistrate (Custom), Lucknow as well as order dated 15.12.2022 passed in the aforesaid case, whereby the applicant has been summoned as an accused under Section 500 I.P.C. as well as order dated 3.6.2023 passed in the aforesaid case, whereby bailable warrant has been issued against the applicant. A further prayer has been made that operation and implementation of the aforesaid

impugned orders dated 15.12.2022 and 3.6.2023 may be stayed during pendency of the present application.

2. It is the case of the applicant that he was a Marine Engineer with the Shipping Corporation of India prior to joining the Civil Services in the year 1986. After serving in the Indian Railway Traffic Service for about six months, the applicant joined the elite Indian Administrative Services in 1986. The applicant served in the Indian Administrative Services in Rajasthan Cadre with distinction for 34 years before superannuating in 2020, rising to the rank of Additional Chief Secretary. The applicant had impeccable service record and has held charge as Principal Secretary of various important government department. The applicant has obtained qualification in varied fields and possesses graduation in Marine Engineering (DMET, Calcutta); Sangeet Bhaskar (MA Equivalent) from Prachin Kala Kendra, Chandigarh; MA Economics (University of Rajasthan, Jaipur), MS Software Systems (BITS, Pilani) and LL.B. (University of Rajasthan, Jaipur). The applicant is also a renowned author having written three bestselling books - 'Krishna Gopeshvara', 'Krishna Yogeshvara', and 'Unbreaking India - Decisions on the CAA and Art. 370'. The applicant is a prolific columnist on contemporary topics and has in-depth knowledge of Indian languages, culture, economics, history, philosophy and spirituality.

3. It has been submitted by learned counsel for the applicant that after applicant's superannuation from the government service, the applicant founded a think tank called 'Jaipur Dialogues Forum' which is a vibrant platform that aims to promote Indic knowledge systems and foster a deeper understanding of Hindu culture and philosophy. Rooted in the ancient wisdom of India, the organization is committed to nurture a renaissance of Indic thought and values in the modern world. It features a wide range of articles, videos, podcasts, and webinars that explore various aspects of Indic knowledge systems, from spirituality and philosophy to science and technology. The applicant has also founded a digital arm called Jaipur Dialogues Digital Limited, which runs the 'Jaipur Dialogues' YouTube channel. The channel presently has over one million subscribers. The

YouTube channel hosts live events and discussions that bring together scholars, thinkers, and practitioners to exchange ideas and engage in constructive dialogue.

4. The genesis of the present application arose when a frivolous and false complaint was filed by the opposite party no.2 on 24.12.2020 under sections 500, 417, 419, 153A, 253B, 465, 469, 471, 504, 120B of the IPC and Section 66 of the Information and Technology Act, 2000 arraying the applicant as one of the accused. In nut-shell, the allegations in the aforesaid complaint dated 24.12.2020 are that the complainant is a social activist and a panelist on news channels. On 18.07.2019, the applicant made a tweet from his twitter handle (@sanjay_dixit) referring the complainant as a Casanova, lovebird and munafiq. Thereafter, on 29.10.2020, the applicant conducted a program on his YouTube channel along with one Mr. Neeraj Atri (co-accused) and Ms. Shivani Tyagi wherein, the applicant made allegations against the complainant of trapping innocent girls through online chatting. Thereafter, Ms. Shivani Tyagi appears in the video and alleges that the complainant traps young girls and whenever any girl tries to expose him, he lodges false first information reports against them. She further alleges that the complainant targets Hindu girls for committing Love Jihad. Thereafter, Mr. Neeraj Atri (co-accused in the complaint) appears in the video and makes similar allegations against the complainant and further states that the complainant has created a fake impression of being a nationalist.

5. It has been submitted by learned counsel for the applicant that the complaint filed by the opposite party no.2 does not disclose any offence whatsoever in nature against the applicant under Section 499/500 IPC and, therefore, the Magistrate has committed a serious error in passing the impugned order issuing process against the applicant and, thus, the impugned order is bad in law and cannot sustain the test of judicial scrutiny. He further submits that the complainant has been running his fake and false propaganda on social media for years. The credentials of the complainant are highly doubtful, but claims to be a "socio-religious legal political commentator". The complainant has gained followers on social media by

portraying him to be extremely critical of the religion Islam and making "bold" comments in respect thereof. Learned counsel submits that the actions of the complainant have been exposed by various people on social media whereby it has been widely reported that the complainant only uses the false narrative of being a 'nationalist' to trap innocent women and that the complainant, taking advantage of his qualification and presence in the Family Court of Lucknow, specifically targets distressed women facing family crisis and lures them.

6. Further, it has been submitted by learned counsel for the applicant that in the year 2020, one of the victims of the lecherous activities of the complainant, Ms. Shivani Tyagi, contacted the applicant and informed him about the harassment faced by her at the hands of the complainant. Ms. Shivani Tyagi also verified her claim by providing audio clips and videos of the illicit acts of the complainant. It has been submitted that in the alleged video dated 29.10.2020, the applicant conducted an interview program along with Mr. Neeraj Atri (co-accused) and Ms. Shivani Tyagi on the basis of the numerous complaints made by women in the past as well as on the basis of the direct proof provided by Ms. Shivani Tyagi. In the said video, the applicant informed the viewers how the complainant had been committing his illegal acts and was trapping innocent young women. The entire video dated 29.10.2020 is based on the statement of Ms. Shivani Tyagi and the proof provided by her, wherein she has made categorical and direct allegation of harassment against the complainant. However, it is pertinent to submit that the complainant has deliberately and intentionally not made Ms. Shivani Tyagi a party to the instant complaint. It has been submitted that the applicant, by means of the video dated 29.10.2020, acted in good faith and on the basis of the direct evidence produced by the victim Ms. Shivani Tyagi, provided a platform to express the ordeal faced by her at the hands of the complainant so as to prevent other similar innocent women from being trapped by the complainant and so that other victims may also find strength to come out and speak the truth.

7. Learned counsel for the applicant further submits that the complainant, in his entire complaint dated 24.12.2020, has made no specific denial of the

allegations made against him. The complainant has very conveniently, in order to deny any involvement, vaguely asserted that his twitter handle was being misused, without any proof at all. He further submits that the complainant himself has admitted in the complaint of knowing Ms. Shivani Tyagi and Ms. Upasna, who is another victim of the harassment by the complainant. The complainant has not made any specific denial of the incidents as informed by Ms. Shivani Tyagi and has merely provided a vague story in respect thereof. Thus, the incidents revealed by Ms. Shivani Tyagi are *prima facie* true. It has been submitted that the complainant in his statement made under Section 200 Cr.P.C. has again made absolutely vague assertions and made false statements which does not disclose any offence whatsoever in nature against the applicant under Section 499/500 IPC. The complainant has also not made any specific statement that due to the alleged imputation made by the applicant, the reputation of the complainant has been lowered in the estimation of others. Learned counsel further submits that the applicant has done fair, unbiased and bona fide reporting of the whole incident in his YouTube video dated 29.10.2020 for the benefit of the public good, in good faith and for the protection of the interest of the victims of the complainant's actions and, thus, no *mala fides* can be imputed to the applicant. The statements made by the applicant in the video dated 29.10.2020 were made in good faith and for public good, therefore, it is squarely covered within the exceptions to Section 499 IPC.

8. It has been further submitted by learned counsel for the applicant that a conjoint reading of Section 499 IPC and Explanation-4 thereto, this Court makes it amply clear that there has to be an averment in the complaint to the effect that because of the imputation, the complainant's reputation had been lowered in the estimation of others. He submits that in the present complaint dated 24.12.2020, the opposite party no.2/complainant has not made any averment in the complaint that due to the alleged imputation made by the applicant, the prestige, image and reputation of the complainant has been lowered in the estimation of the public and thus, the complaint itself was not maintainable. It has been submitted that it was incumbent upon the complainant to produce at least one witness, however,

no witnesses have been produced by the complainant and no statement of any witness has been recorded under section 202 Cr.P.C. It has been further submitted that as per Section 204(2), no summon or warrants shall be issued against an accused unless a list of prosecution witnesses has been filed. However, in the instant case, no list of witness has been filed by the complainant and therefore, the Magistrate has grossly erred in issuing the impugned summoning order dated 15.12.2022. He further submits that the Magistrate has issued the impugned summoning order dated 15.12.2022 without examining any witness other than the complainant to ascertain if Explanation 4 to Section 499 IPC was satisfied in the facts of the instant case.

9. It has been submitted by learned counsel for the applicant that Explanation 4 of Section 499 IPC provides that no imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

10. Explanation 4 of Section 499 IPC reads as under:

"499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 4.-No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

11. To buttress his argument, learned counsel for the applicant has relied upon Paras-11 and 12 of the judgment of the Supreme Court in the case of ***Shatrughna Prasad Sinha vs. Rajbhau Surajmal Rathi, (1996) 6 SCC 263***, which read as under:

"11. Explanation 4 provides that no imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

12. A reading of the complaint does not contain any of the allegations constituting the offence of defamation punishable under Section 500 IPC. The contents of the magazine are alleged to be defamatory against the Marwari community, lowering them in the estimate of the public or their reputation is lowered in the society. But we do not find any allegation made in the complaint. Accordingly, we hold that the complaint filed in the Court of the Judicial Magistrate, First Class in Court No. 4 at Pune does not contain any of the allegations so as to constitute the offence of defamation defined in Section 499 and punishable under Section 500. Consequently, the Magistrate was not justified in issuing the process against the appellant. The complaint is accordingly quashed."

12. It has been further submitted by learned counsel for the applicant that there are four Explanations to the main provision and Explanation 4 provides the expanse and inherent control as to what imputation has been regarded as harm to a person's reputation and that an imputation can only be treated as harm of a person's reputation. Learned counsel for the applicant has also relied upon Para 170 of the judgment of the Supreme Court in ***Subramanian Swamy vs. Union of India (2016) 7 SCC 221***, which reads as under:

"170. Having dwelt upon the ingredients, it is necessary to appreciate the Explanations appropriately. There are four Explanations to the main provision and an Explanation has been appended to the Fourth Exception. Explanation 4 needs to be explained first. It is because the said Explanation provides the expanse and the inherent control wherein what imputation has been regarded as harm to a person's reputation and that an imputation can only be treated as harm of a person's reputation if it directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. It is submitted by Dr Dhavan, learned Senior Counsel, that Explanation 4 has many a distinction and covers a number of criteria which can be used widely. He has commended us to a passage from State of J&K v. Triloki Nath Khosa [State of J&K v. Triloki Nath Khosa, (1974) 1 SCC 19] solely for the purpose that Explanation 4 engulfs micro-distinctions which is impermissible. To appreciate manifold submissions urged by the learned counsel for the petitioners, it is seemly to refer to how these Explanations have been understood by the Court. We are conscious

that we are dealing with the constitutional validity of the provision and the decisions relate to interpretation. But the purpose is to appreciate how the Explanations have been understood by this Court."

13. The complainant has failed to produce any witness to *prima facie* establish that the alleged imputations had lowered his reputation in the estimation of others and the Magistrate has not gone carefully to the extent to see whether reputation of the applicant in the eyes of others has been lowered and after merely reviewing the complainant's statement, he proceeded to issue summons. Learned counsel for the applicant relies upon the judgment of the Supreme Court in ***Jaideep Bose vs. Bid and Hammer Auctioneers Private, 2025 SCC Online SC 348***, wherein in Para 20, the Court held as under:

*"20. Regarding the appellants in the other appeals, it is evident from the orders of the trial Court as well as the High Court that not all news articles individually authored by the various accused were considered. While passing the impugned order, the High Court referred only to one article authored by Ms. Neelam Raj (A4) and neither took into account nor discussed the other news articles authored by the remaining accused. Furthermore, the mandatory procedure under section 202 Cr. P.C., was clearly not followed. The Appellants viz., A8, A9, A10, A12 and A13 reside in Mumbai/Kolkata, whereas the complaint was filed in Bangalore. The complainant failed to produce any witness to *prima facie* establish that the alleged imputations had lowered their reputation in the estimation of others and the Magistrate, after merely reviewing the complainant's statement, proceeded to issue summons. Thus, the Magistrate's order clearly suffers from procedural irregularity. Ordinarily, such irregularities would warrant a remand. However, in the present case, the auction was conducted on 27.06.2014 and the complaint was filed on 22.08.2014. No material has also been placed before us to suggest that the auction was unsuccessful or that any damage or loss was actually caused, due to the alleged news articles published in the newspapers. Irrespective of the same, at this stage, remanding the matter for fresh examination of witnesses before issuance of summons would serve no useful purpose, given the remote likelihood of securing witnesses. It would only prolong the litigation yielding little to no benefit especially, since the auction has already concluded and more than a decade has passed. We also take note of the submissions of the learned counsel for the appellants that there is no intent to defame or harm the complainant's reputation. Notably, this Court vide common order dated 20.07.2022 titled 'DAG Pvt. Ltd. v. Bid & Hammer Auctioneers (P) Ltd.' allowed similar criminal appeals bearing Nos. 1008/2022 etc. cases, arising from the complaint filed by the same complainant. In view of the above stated reasons, to meet the ends of justice, we are inclined to quash the order passed by the High Court as well as the issuance of summons by*

the Magistrate. Consequently, the criminal proceedings initiated against the appellants are also liable to be quashed."

14. It has been further submitted by learned counsel for the applicant that causing harm to the reputation of a person is the basis on which the offence of defamation is founded. There has to be mens rea of the person making imputation to constitute the said offence. The sole burden is on opposite party no.2 to prove that his reputation was tarnished in the eyes of others, which he could not establish in the present case. To buttress his argument, learned counsel for the applicant has relied upon the judgment in the case of ***Subhash Chandra vs. State of U.P. and others, Application U/s 482/378/407 No.1044 of 2011***, wherein the Court in Para 11 held as under:

"11. To constitute an offence of defamation, there has to be imputation and admission made in the manner as provided under the provision for knowing or causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the reputation of the person is the basis on which the offence of the defamation is founded. There has to be mens rea of the person making imputation to constitute the said offence. The complainant is required to show that the accused had intended or known or reason to believe that the imputation made by him would harm the reputation of the complainant. In most of the criminal defamation cases, there is heavy burden on the magistracy to scrutinise the complaint in all aspects. The Magistrate must be satisfied by application of mind on the basis of relevant facts and circumstances whether the ingredients of Section 499 IPC are satisfied and whether the accused has committed the offence before issuing process. The Magistrate must be circumspect and judicious in exercising his jurisdiction. The words "some person aggrieved" used in Section 199 Cr.P.C. are not to wide, and refer to definite identity of a person or group of persons, who sustained specific legal injury. "Person aggrieved" is to be determined by the Court in each case and the Court is to be satisfied that the complainant is "person aggrieved"."

15. Counsel for the applicant has also relied upon the judgment of the Madras High Court in ***Nakkheeran Gopal vs. Rajendran, C.R.L.O.P. No.8713 of 2016***, wherein in Paras 8 and 11, the Court held as under:

"8. Explanation 4 is relevant here. What is important to make out the case of defamation as per Explanation 4 is that, only if a person's reputation, character and credit is directly or indirectly, in the estimation of others, is lowered, the offence of defamation would be attracted. As rightly pointed out by the learned counsel for the petitioners, the reading of the complaint allegations shows that there is no pleading as to whether respondent's reputation, character and credit is harmed in the estimation of others. Most importantly, the respondent has not cited any witness to speak

about his reputation being dented in the estimation of others on reading the article referred in the complaint. Admittedly, no witness was examined to speak about this aspect.

11. *The judgments relied and mentioned above make it clear that there should be averment in the complaint that the allegation made by the accused were found to be untrue. Not only that, due to the above imputation, the prestige, image and reputation of the complainant is lowered in the estimation of the public. Admittedly, there is no averments made in the complaint on these lines. Therefore, this Court is of the considered view that there is no prima-facie case made out to take cognisance of the case against the petitioners for the offences under Section 469 & 500 r/w. 501 & 502 of Indian Penal Code."*

16. Learned counsel for the applicant has also relied upon Paras 30, 33 and 35 of the judgment of **J. Jayalalitha vs. Arcot N. Veerasamy, 1997 SCC Online Mad 385**, which read as under:

"30. Nothing has been mentioned in the complaint with reference to the fact that the allegations made by the accused against the complainant was found to be untrue, either in the investigation proceedings, or in Court proceedings. It must be also noted, that there is no averment either in the complaint or in the sworn statement, that due to the above imputation the prestige, image and reputation of the complainant has been lowered in the estimation of the public.

33. *Thus, the conjoint reading of S. 499 I.P.C., with this Explanation-4, would make it clear, that in the complaint, there shall be an averment to the effect, that because of the imputation the complainant's reputation had been lowered in the estimation of others. As indicated earlier, this important ingredient is absent in the complaint and in the sworn statement."*

35. *In a recent judgment of the Supreme Court in Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi and Others (1997 Crl. L.J.212), while answering similar question, the Apex Court, after extracting S.499 I.P.C. and Explanation-4 thereto, observed as follows: -*

"A reading of the complaint does not contain any of the allegations constituting the offence of defamation punishable under S.500 I.P.C. The contents of the magazine are alleged to be defamatory against the Marwari community, lowering them in the estimate of the public or their reputation is lowered in the society. But we do not find any allegation made in the complaint. Accordingly, we hold that the complaint filed in the court of the Judicial Magistrate, First Class in Court No.4 at Pune does not contain any of the allegation so as to constitute the offence of defamation defined in S.499 and punishable under Section 500 I.P.C."

Therefore, in the absence of the said averment in the complaint, with reference to the fact of the reputation of the petitioner having been lowered down in the estimation of the others. I feel that sufficient ground is not made out for proceeding further, by taking cognizance of the complaint."

17. Sri Syed Rizwan Ahmad, opposite party no.2, who appears in person, has made submissions that it is settled that at the stage of issuing process it is not the duty of the court to find out whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at the stage of summoning could only be to determine whether there are sufficient grounds for proceeding further or not. The correctness or probability or improbability of individual items of evidence on disputable grounds are to be looked into at the time of trial. To buttress his argument, opposite party no.2 has relied upon Paragraphs 12 to 17 of the judgment of the Supreme Court in ***Delhi Race Club Ltd. and others vs. State of U.P. (2024) 10 SCC 690***, which read as under:

"12. It is by now well-settled that at the stage of issuing process it is not the duty of the court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. Mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation.

13. If, however, a bare perusal of a complaint or the evidence led in support of it shows essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only.

*14. What the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a *prima facie* case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. [See : *D.N. Bhattacharjee v. State of W.B. [D.N. Bhattacharjee v. State of W.B., (1972) 3 SCC 414 : 1972 SCC (Cri) 564]*]*

*15. Further it is also well-settled that at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its inherent jurisdiction which is to be sparingly used. The scope of the inquiry under Section 202CrPC is extremely limited-only to the ascertainment of the truth or falsehood of the allegations made*

*in the complaint - (i) on the materials placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a *prima facie* case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.*

16. *In fact in proceedings under Section 202CrPC, the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a *prima facie* case against him. The discretion given to the Magistrate on this behalf has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in the conviction of the accused.*

17. *These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 CrPC which culminates into an order under Section 204. [See: Nagawwa v. Veeranna Shivalingappa Konjalgi [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] .It is no doubt true that in this very decision this Court has enumerated certain illustrations as to when the order of the Magistrate issuing process against the accused can be quashed or set aside. These illustrations are as under: (Nagawwa case [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] , SCC p. 741, para 5)*

“5. ... (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.”

18. Opposite party no.2 has also relied upon the judgment of Supreme Court in ***Sunil Bharti Mittal vs. CBI (2015) 4 SCC 609***, relevant portion of which reads as under:

"48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not."

19. It has been further submitted by opposite party no.2 that at the stage of taking cognizance, the only consideration before the Court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not. He has also relied upon the case of **Pepsi Foods Ltd. and others vs. Special Judicial Magistrate and others (1998) 5 SCC 749**. He has further relied upon the judgment of the Supreme Court in **State of Haryana and others vs. Bhajan Lal and others 1992 Supp. (1) SCC 335**, relevant paragraph of which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontested allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

20. It has been further submitted by Sri Syed Rizwan Ahmad that the provision of Section 204(2) Cr.P.C. provides list of witnesses mandatory at the time of issuance of process, which if not submitted is a curable defect which can be cured at the time of commencement of trial, provided such witnesses exist. He has submitted that the present complaint has the defamatory content not being private in nature or limited to few but aired on social media viewed by thousands. It has been further submitted that the jurisdiction of Magistrate under Section 204(1) Cr.P.C. indicates that he has to issue summons or warrants at the first instance, as the case may be, if he is satisfied that there is sufficient ground to proceed. He further submits that Section 204(2) Cr.P.C. does not override Section 254(1) Cr.P.C., which imposes a duty on the Magistrate to take all such evidence as may be produced in support of the prosecution. An argument has been advanced to the extent that the provision regarding submission of a list of witnesses in Section 204(2) Cr.P.C. cannot be considered as mandatory in nature. He has relied upon the judgment in ***Laxmi Shankar Pandey and others vs. State of U.P. and another (Application U/s 482 No.42957 of 2022)***, decided on 17.2.2023. He has also relied upon Para-4 of the judgment in ***N.K. Shah vs. M/s. Engineering General Workers Union, Bangalore, 1997 CrlJ 3537***, which read as under:

"4. It is no doubt held by this Court in a decision reported in (ILR 1987 Kar 2225) holding that the compliance of sub-section (2) of Section 204 Cr. P.C. is a mandatory requirement of law & if the complainant does not enclose the list of witnesses or a statement to the effect that he does not have any other witness except the complainant himself, the proceedings will have to be quashed. However, though not direct on this point, Their Lordships of the Supreme Court in a decision reported in State of H.P. v. Pirthi Chand [(1996) 2 SCC 37.] held that non-compliance of the mandatory requirement of law is not a ground for this Court to interfere under Section 482 Cr. P.C. Even otherwise this complaint is only filed for non-implementation of the settlement arrived at between the parties. Therefore, it is only the interpretation of the settlement which is required to be done by the learned Trial Court to find out as to whether the offence has been committed or not. Under those circumstances, if the witness list is not enclosed, the petitioner is in no way prejudiced or it does not in any way affect the defence to be taken by the petitioner. Therefore, this contention is rejected."

21. Opposite party no.2 has also relied upon Para 29 of the judgment in ***Pramila Mahesh Shah vs. Employees State Insurance Corporation, 2002 2MhLj 100***, which reads as under:

"29. Coming to section 204(2) of Criminal Procedure Code, I must say that the non-compliance of this provision does not affect the jurisdiction of the Magistrate either to issue process or to try the case. This view has been taken by the Apex Court in Noorkhan v. State of Rajasthan; Madhaorao Pandurang v. Yeshwant; Abdullah Bhat v. Ghulam Mohd. Wani; and Shashi Nair v. R.C. Mehta (supra). The procedural laws are hand maid of justice and the question of prejudice is of paramount consideration in respect of breach of procedural provisions. Therefore, even if it was to be held that the provisions of section 204(2) are mandatory, that, by itself, would not vitiate the issue of process or the jurisdiction of the Court and where the matter is at the initial stage, directions can be given to furnish the copy of list of witnesses, if any, before the proceedings actually commenced. The stage "of the proceedings is relevant to determine the prejudice, if any, caused to the accused. In the case under consideration, the substantive proceedings had not yet started. Therefore, in the circumstances, directions to the complainant to supply copy of witnesses, if any, within a period of four weeks from the receipt of the copy of the order by the trial Court would be considered as sufficient compliance of section 204(2) of Criminal Procedure Code, 1973."

22. It has been further submitted by Sri Syed Rizwan Ahmad that the identity of none of the victims of sexual assault was revealed or made part of the application nor in the uploaded audio-video, by the applicant. The imaginative allegations were made against the opposite party without any proof. It has been submitted that the Twitter handles, Whatsapp chats

shown as that of opposite party/complainant without IP address, handle generation E-mail or even mobile number of opposite party/complainant. The Twitter handle which is made part of the counter by the applicant, is non verified as it is not budged by Blue Tick. It is further submitted that the statement of Ms. Shivani in the defamatory video was depicted as she is naming the opposite party/complainant but close perusal of her statement shows that she never named the opposite party/complainant.

23. Sri Syed Rizwan Ahmad has further submitted that the applicant had ill-intention to lower down the dignity of the complainant and that is why he had uploaded the videos which is certainly defamatory and definitely he wanted to get cheap publicity. It has been submitted that from a perusal of Para 17 of the application, it is clear that the averments made are false, malafide, baseless, atrocious and defamatory in nature whereby the applicant has again targeted the complainant which is highly objectionable. It has been submitted that the complainant is on Twitter since years and some accounts mentioned by the applicant are either fake or parody accounts and this had become a trend to use name and photo of a popular social media public figure which has recently become a new normal trend on Twitter. None of the accounts mentioned by the applicant is verified Blue Tick account or IP address of any is even remotely associated/connected to the opposite party, nor the applicant has any record of IP address of such account connecting with that of deponent. Fake/parody accounts is an unchecked new normal trend on social media which is uncontrollable and unaccounted for.

24. I have heard Sri Nadeem Murtaza along with Sri Paavan Awasthi, learned counsel for the applicant, learned AGA for the State, Sri Syed Rizwan Ahmad, opposite party no.2, who appears in person and perused the record.

25. The Supreme Court in the case of *Nakkheeran Gopal* (supra) has observed that it is mandatory under Section 202 Cr.P.C. when the accused is residing outside the jurisdiction of Magistrate, the issuance of process should be postponed. The Magistrate should either inquire the case himself or direct an investigation to be made by police officer or by such other

person, he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. May be investigation by police officer is not required in this case and certainly an enquiry as to whether respondent's reputation is harmed in the estimation of others ought to have been conducted by the Magistrate by examining witnesses which was not done.

26. Section 499 IPC is pertaining to defamation wherein it is provided that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person. It is thus, clear that defamation as mentioned in the opening part of Section 499 IPC is subjected to exception of Explanation-4 wherein it is provided that no imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

27. In the present case, there is no evidence produced by opposite party no.2 which supports his version so that his image could have been lowered down in the eyes of others. To constitute an offence of defamation, there has to be imputation and admission made in the manner as provided under the provision for knowing or causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made.

28. The opposite party no.2 is making allegation that the imputation made by the applicant would harm his reputation, but in his own eyes. No witness has been produced by him who could substantiate his case in view of the statutory requirement made in Explanation-4 of Section 499 IPC. It is the case of opposite party no.2 that large number of people have seen the video which is defamatory in nature, but no one has been examined to prove his case, which is the statutory requirement.

29. The case of the applicant is supported by the judgment of ***Shatrughna Prasad Sinha*** (supra), ***Subramanian Swamy*** (supra), ***Jaideep Bose*** (supra), ***Nakkheeran Gopal*** (supra), ***J. Jayalalitha*** (supra) and ***Dipankar Bagchi vs. State of West Bengal, 2009 SCC Online Cal 1877.***

30. The complainant had not produced any witness under Section 202 Cr.P.C. to prima facie establish that the alleged imputation had lowered down his image in the estimation of others and the Magistrate has considered only the complainant's statement while issuing summons. Thus, the order passed by the Magistrate clearly suffers from procedural irregularities.

31. In view of the aforesaid discussion, this application deserves to be allowed. It is accordingly ***allowed***. The summoning order dated 15.12.2022 is set aside and the entire proceedings of Complaint Case No.7374 of 2020 (Syed Rizwan Ahmad vs. Jaipur Dialogues Forum and others), pending in the court of Additional Chief Judicial Magistrate (Custom), Lucknow, are quashed. No order as to costs.

(Brij Raj Singh,J.)

Dated: January 13, 2026

Sachin